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08/992,504	12/17/1997	EDWARD W. HOLLAND		3900

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EXAMINER

WUJCIAK, ALFRED J

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3632

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 34

Application Number: 08/992,504
Filing Date: December 17, 1997
Appellant(s): HOLLAND ET AL.

Mark A. Watson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/7/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 75-77, 81-82, and 86-93.

Claims 78-80, 83-85 and 94 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 75, 77, 81, and 88-91 stand or fall together, claim 76 stands or falls alone, claim 82 stands or falls alone, claims 86-87 stand or fall

together and claims 92-93 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

1,780,872	Dumben	11-1930
5,822,918	Helfman et al.	10-1998
4,966,340	Hunter	10-1990

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 75-77, 81-82, 86-87, and 92-93 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # 1,780,872 to Dumben.

Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5) and a pair of support members (17) disposed on a top surface of the base. Each support member having a single, planar holding surface (figure 2, a). The support members are substantially perpendicular to the top surface of the base. The support members are slidably engaged (16) with

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the top surface of the base. A securing apparatus (12,19) is capable of releasably securing the support members (17). The second support member (other support member transverse from the first support member) is permanently affixed to the base (figure 2) and slidably engaged with the top surface of the base. The support members comprise an L-shaped bracket wherein a first leg (17) of bracket extends substantially perpendicular to the base and having a face forms the planar holding surface. A second leg (16) of bracket has a face, which is slidably engaged with the top surface of base. The base has bottom surface (6), which is in contact with the ground and prevent a display from tipping over. The top and bottom surfaces are in elongated rectangular-shapes. The surfaces are perpendicular to the support members (figure 2).

In regard to claims 92 and 93, the support member is disposed on a top surface of the base having a single planar holding surface. The support member is slidable inward or outward on the base. The stand comprises a first securing apparatus (19) capable of releasably securing the support member to the base so as to prevent relative motion between the member and the base and a second securing member (the other support member, 17, is a securing member for supporting an item when the single member is pressing against the item from the other side) for attaching the support member to an item placed against the planar holding face of the support member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 88, 90-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumben.

In regards to claim 88, Dumben teaches the top and bottom surfaces of the base but fails to teach they are in a square shape. It would have been obvious to the designer's choice to have modified the elongated rectangular to a square shape to provide an ornament appearance. Appellant has asserted no unexpected critically in making the base square shaped.

In regard to claim 90-91, Dumben teaches the base and support members being made of metal (col.1, line 33-40) but fails to teach they are coated with a rust-resistant plating material. It would have been obvious to the designer's choice to have added the rust-resistant plating material to the base and support members to prevent the corrosion of rust. Appellant has asserted no unexpected critically in making the use of rust resistant coating.

Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dumben in view of US Patent # 4,966,340 to Hunter.

Dumben teaches the base but fails to teach the base having at least two wheels. Hunter teaches a base (40) having at least two wheels (30). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added Dumben base with

wheels as taught by Hunter to provide a convenience in moving the base of Dumben from one location to another.

(11) *Response to Argument*

The appellant argues that the base in Dumben invention does not show a flat or planar surface and that the base is a hollow housing. In figure 1 of Dumben's invention clearly shows that the top surface (5) of the base is a flat or planar surface. Dumben's top surface requires to be flat or planar surface to allow the support member(s) to slide along thereon. If the top surface on the base were not flat, it would be impossible to move the supporting member. Figure 3 of Dumben's invention shows the base is a hollow housing. The hollow housing has two securing apparatus that are connected to the support members. The hollow housing allows the two securing apparatus to slide underneath the top surface.

The appellant disagreed that Dumben teaches the support members being disposed on the top surface of the base. Figure 7 in Dumben's invention clearly shows that the support member is disposed on the top surface of the base and that the support member has a planar surface with four edges, the two edges on the bottom of the planar surface are resting on the base as shown in figure 7. Both edges provide a stable support for the support member and prevent the support member from wobbling when changing the location of the support member.

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The appellant argues that Dumben screws (19) do not prevent relative motion between the base and the book ends. The screw (19) in Dumben's invention shows that the screw keeps the book ends within the base when changing the location of the book ends. The book ends would not slide out of the base when moving the ends. If the screw (19) are screwed tighten against the sliding block (12), it would prevent the book ends from sliding.

The appellant argues that Dumben does not teach the second support member being permanently affixed to the base and slidably engaged with the surface of the base. On figure 7 of Dumben's invention shows the slidable floating block (12) secures the second support member within and on the base. The slidable floating block is connected to a slidable block (16), which allows the support member to slide along the top surface of the base. Furthermore, Dumben teaches the second support member being permanently affixed to the base and slidably engaged with the surface of the base.

Respectfully submitted,

Joey Wujciak


7/20/04

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